

State Administration Council

**Tuesday, December 6, 2005
1:10 PM- 1:50PM
17 HOB (Morris Hall)**

Council Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

(AMENDED 12/6/2005 10:33:18AM)

Amended(1)

State Administration Council

Start Date and Time: Tuesday, December 06, 2005 01:10 pm

End Date and Time: Tuesday, December 06, 2005 01:50 pm

Location: Morris Hall (17 HOB)

Duration: 0.67 hrs

Consideration of the following bill(s):

HB 61B CS Elections by Reagan

HB 63B Lobbying by Reagan

HB 65B Public Records and Public Meetings Exemptions for Lobbying by Reagan

NOTICE FINALIZED on 12/06/2005 10:33 by ELLINOR.MARTHA

HOUSE OF REPRESENTATIVES STAFF ANALYSIS



BILL #: HB 61B CS

Elections

SPONSOR(S): Reagan

TIED BILLS:

IDEN./SIM. BILLS: SB 8B

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Ethics & Elections Committee	10 Y, 0 N, w/CS	Mitchell	Mitchell
2) State Administration Council		Mitchell 	Bussey 
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

HB 61B requires prior written notice to a state or county political party chairperson, or his or her designee(s) for in-kind contributions to the party. This represents a further clarification of the changes made in 2005 in HB 1567 with regard to in-kind contributions to political parties.

If enacted, the bill is effective February 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government

Additional government regulation of in-kind contributions is contemplated in the bill. Specifically, the bill attempts to further regulate in-kind contributions made to state and county political parties through a prior notice requirement from the donor.

B. EFFECT OF PROPOSED CHANGES:

During the 2005 session, the Legislature amended section 106.08(6), Florida Statutes, to require that an in-kind contribution to a political party provide a "direct benefit" to the party. See ch. 2005-277, Laws of Fla. (HB 1567).¹ Direct benefit is defined as "fundraising or furthering the objectives of the political party." See s. 106.08(6), F.S.

The bill seeks to further regulate in-kind contributions to state and county political parties by requiring the chairperson of the party or his or her designee(s) to accept such contributions following written notice from the donor.

The written notice must be signed and dated, and may be provided through an electronic (e-mail) or facsimile message. The name of the party chairperson's designee(s) must be on file with the Secretary of State (state parties) or the county Supervisor of Elections (county parties), as the case may be. Acceptance by the party must be acknowledged in writing by the party chairperson or designee(s) *before* the contribution is made. The bill further provides that failure to obtain the written acknowledgement constitutes rejection of an in-kind contribution by the party.

The bill contains an exception from the prior notice requirement for food and beverages not exceeding \$1,500 in the aggregate, if the contribution of such items is accepted by the party chairperson or designee(s).

The bill is effective on February 1, 2006.

C. SECTION DIRECTORY:

None.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

¹ This provision of HB 1567 is effective January 1, 2006.

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

D. FISCAL COMMENTS:

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

2. Other:

B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

One amendment was adopted in the Committee on Ethics and Elections on December 5, 2005. It clarifies that the name of the chairperson's designee or designees must be on file with the Division of Elections in a form acceptable to the Division.

HB 61B

2005
CS

CHAMBER ACTION

The Ethics & Elections Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to elections; amending s. 106.08, F.S.;
prescribing requirements for making in-kind contributions
to political parties; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (6) of section 106.08, Florida
Statutes, is amended to read:

106.08 Contributions; limitations on.--

(6)(a) A political party may not accept any contribution
that ~~which~~ has been specifically designated for the partial or
exclusive use of a particular candidate. Any contribution so
designated must be returned to the contributor and may not be
used or expended by or on behalf of the candidate.

(b)1. ~~Also,~~ A political party may not accept any in-kind
contribution that fails to provide a direct benefit to the
political party. A "direct benefit" includes, but is not limited

HB 61B

2005
CS

to, fundraising or furthering the objectives of the political party.

2.a. An in-kind contribution to a state political party may be accepted only by the chairperson of the state political party or by the chairperson's designee or designees whose name is on file with the division in a form acceptable to the division prior to the date of the written notice required in sub-subparagraph b. An in-kind contribution to a county political party may be accepted only by the chairperson of the county political party or by the county chairperson's designee or designees whose name is on file with the supervisor of elections of the respective county prior to the date of the written notice required in sub-subparagraph b.

b. A person making an in-kind contribution to a state political party or county political party must provide prior written notice of the contribution to a person described in sub-subparagraph a. The prior written notice must be signed and dated and may be provided by an electronic or facsimile message. However, prior written notice is not required for an in-kind contribution that consists of food and beverage in an aggregate amount not exceeding \$1,500 which is consumed at a single sitting or event if such in-kind contribution is accepted in advance by a person specified in sub-subparagraph a.

c. A person described in sub-subparagraph a. may accept an in-kind contribution requiring prior written notice only in a writing that is signed and dated before the in-kind contribution is made. Failure to obtain the required written acceptance of an

HB 61B

2005
CS

50 | in-kind contribution to a state or county political party
51 | constitutes a refusal of the contribution.


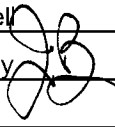
52 | d. An in-kind contribution may not be given to a state or
53 | county political party unless the in-kind contribution is made
54 | as provided in this subparagraph.

55 | Section 2. This act shall take effect February 1, 2006.

HB 63B

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 63B Lobbying
SPONSOR(S): Reagan
TIED BILLS: HB 65B **IDEN./SIM. BILLS:** SB 6B

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Ethics & Elections Committee</u>	<u>10 Y, 0 N</u>	<u>Mitchell</u>	<u>Mitchell</u>
2) <u>State Administration Council</u>	<u></u>	<u>Mitchell</u> 	<u>Bussey</u> 
3) <u></u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

HB 63B modifies the registration and reporting requirements that govern legislative lobbyists and lobbyists of the executive branch and the Constitution Revision Commission. The bill amends ss. 11.045, 11.40 and 112.3215, F.S., and creates ss. 11.0455 and 112.32155, F.S.

A similar bill, HB 1849 by the Ethics and Elections Committee and Representative Reagan, was filed in the 2005 session and passed all House committees of reference. The Senate version of the bill, CS/SB 2646, was taken up in the House, amended and passed by a vote of 96-14, but died in the Senate (as a message from the House) on May 6, 2005.

Except as otherwise expressly provided, the bill is effective January 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty

Requiring more detailed financial disclosure by lobbyists makes the government more responsive and open to the public.

B. EFFECT OF PROPOSED CHANGES:

Current Situation -

In 2004, there were 2,041 legislative lobbyists registered in Florida to represent 2,845 principals. The total number of registrations for the year was 7,915, as a single lobbyist often registers to represent multiple principals and must file a separate registration for each principal. Florida's legislative lobbyists (and principals through their designated lobbyists) must register annually¹ and report lobbying "expenditures" twice per year.²

Lobbying "expenditures," essentially payments, distributions, or anything of value made by a lobbyist or principal for the purpose of lobbying, are reported *in the aggregate* in ten broad categories to the Division of Legislative Information Services' Lobbying Registration Office (LRO).³ Individual expenditures are not reported to the LRO. Legislative lobbyists filed 7,445 expenditure reports for activities in the first half of 2004, and 7,543 for the second half.

Florida does not offer electronic filing for registration or semi-annual expenditure reports; paper registration and reports are currently required. Consequently, the LRO manually aggregates the expenditures for each reporting period, for each principal with multiple lobbyists; and each principal's total annual lobbying expenditures.⁴

This aggregate expenditure information, as well as monetary information contained in the expenditure reports, are available from the LRO in hard-copy form upon request, but are not currently available on-line. The only tangible on-line information with respect to providing public notice of special interest activities is the name and address of principals and lobbyists, along with the affiliation between lobbyists and principals.⁵

¹ Each lobbyist registration must include a free-form, general description of the lobbyist's area of legislative interest on behalf of the principal. No categories of interest are prescribed for the lobbyist. As a result, descriptions tend to be generic (i.e., issues pertaining to clients) and mostly without any practical value in providing notice to the public of the general lobbying interests of each principal.

² Expenditure reports are due 45 days after the end of each semi-annual reporting period. s. 11.045(3)(d), F.S. Reporting for the period January 1 through June 30 is due no later than August 14; reporting for the period July 1 through December 31 is due no later than February 14.

³ Sections 11.045(1)(c), 11.045 (3)(a), F.S. Categories of expenditures on the report are: (1) Food & Beverage; (2) Entertainment; (3) Research; (4) Communication; (5) Media Advertising; (6) Publications; (7) Travel; (8) Lodging; (9) Special Events; (10) Other. s. 11.045(3)(a), F.S.

⁴ Florida law directs the Division to perform these calculations. s. 11.045(3)(c), F.S.

⁵ The web site also contains instructional materials such as forms, guides to filing, and applicable laws and rules.

Current law does not require reporting of compensation by registered lobbyists

Proposed Situation -

Filing of Compensation Reports

- The bill requires quarterly reporting of compensation received by lobbying firms.
- Compensation reporting would be by total compensation received by the lobbying firm from all principals in the aggregate.
- Quarterly increments for total compensation begin in \$50,000 increments, up to \$1 million or more.
- Compensation reporting would also be reported by the lobbying firm as received from each principal.
- Quarterly increments for individual principals compensation would begin in \$20,000 increments, up to \$60,000. Any compensation in excess of \$60,000 would be reported to the nearest \$1,000 increment.

No Expenditure Reports

- The bill would prohibit lobbyists and their principals from making *any lobbying expenditures including food and beverages to members or legislative staff.*
- The sole exception would be for floral arrangements and other celebratory items given to members on opening day of the regular session and displayed in chambers.
- Because lobbying expenditures are prohibited under this bill, no lobbyists expenditure reports will be needed, and none will be filed.

Audits and Enforcement

- Lobbying firm compensation reports will be subject to random audits, beginning May 2007.
- 3% of compensation reports will be randomly selected for audit on an annual basis.
- The Joint Legislative Auditing Committee (JLAC) will establish the procedures for random selection.
- The JLAC will also approve a list of no less than 10 state-licensed certified public accountants who will be available to conduct random audits.
- A lobbying firm selected for random audit may choose an auditor from the approved list or the JLAC will appoint one.
- All random audits will be forwarded to the Speaker of the House and Senate President.
- The rules of each house will govern the procedures for review of random audits.
- Any complaints against a lobbyist will be governed by the rules of each house.

Electronic Filing of Compensation Reports

HB 63B creates s. 112.32155, F.S., *effective April 1, 2006*, to provide for electronic filing of compensation reports. The system will be Internet-based and accessible to anyone with Internet access using standard web browsing software. The electronic filing system appears to be modeled after the system used by candidates, committees and political parties for filing campaign treasurer's reports, pursuant to s. 106.0705, F.S.

The first compensation reports subject to the bill must be filed by May 15, 2006, for the reporting period January 1, 2006 through March 31, 2006.

Miscellaneous Issues

- The bill provides the same reporting and enforcement for executive branch lobbyists, except that the random audit reports for these lobbyists are forwarded to the Commission on Ethics.
- There is also a tied public records bill, **HB 65B**, that exempts the private business records of the randomly selected lobbying firms for purposes of conducting the random audits.

C. SECTION DIRECTORY:

None.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

2. Expenditures:

There will be additional costs associated with the creation and maintenance of an on-line, electronic filing system for lobbying reports. The Office of Legislative Information Technology Services (OLITS) estimated during the 2005 session that the cost of a joint electronic filing system meeting the requirements of CS/SB 2646, if the program were outsourced, at \$488,625.⁶ However, this bill contemplated filing of expenditure reports *which are not required under this bill*.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

2. Expenditures:

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

D. FISCAL COMMENTS:

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

2. Other:

⁶ Information contained in Staff Analysis of CS/SB 2646 by Senate Ways and Means Committee, dated March 31, 2005.

B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

HB 63B

2005

1 A bill to be entitled
2 An act relating to lobbying; amending ss. 11.045 and
3 112.3215, F.S., relating to registration and reporting
4 requirements for legislative lobbyists and lobbyists of
5 the executive branch and Constitution Revision Commission;
6 providing and amending definitions; requiring each
7 principal upon the registration of the principal's
8 designated lobbyist to identify the principal's main
9 business; requiring each lobbying firm and principal to
10 maintain certain records and documents for a specified
11 period; specifying judicial jurisdiction for enforcing the
12 right to subpoena certain documents and records for audit;
13 deleting the requirement for lobbyists to file expenditure
14 reports; requiring each lobbying firm to file quarterly
15 compensation reports; requiring each lobbying firm to
16 report certain compensation information in dollar
17 categories and specific dollar amounts; requiring certain
18 lobbying firms to report the name and address of the
19 principal originating lobbying work; providing for
20 certification of compensation reports; requiring the
21 Division of Legislative Information Services and the
22 Commission on Ethics to aggregate certain compensation
23 information; revising the periods for filing compensation
24 reporting statements; prescribing procedures for
25 determining late-filing fines for compensation reports;
26 prescribing fines and penalties for compensation-reporting
27 violations; providing exceptions; prohibiting lobbying
28 expenditures, except for certain floral arrangements and

Page 1 of 44

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb0063b-00

29 celebratory items; prohibiting principals from providing
30 lobbying compensation to any individual or business entity
31 other than a lobbying firm; providing for the Legislature
32 to adopt rules to maintain and make publicly available all
33 advisory opinions and reports relating to lobbying firms,
34 to conform; providing for the Legislature to adopt rules
35 authorizing legislative committees to investigate certain
36 persons and entities engaged in legislative lobbying;
37 providing for the commission to investigate certain
38 lobbying firms for lobbying report violations; providing
39 procedures for disposing of lobbying report investigations
40 and proceedings; providing penalties; providing for public
41 access to certain records; authorizing the commission to
42 adopt administration rules and forms relating to
43 compensation reporting; requiring compensation reports to
44 be filed electronically; creating ss. 11.0455 and
45 112.32155, F.S.; defining the term "electronic filing
46 system"; providing requirements for lobbying firms filing
47 reports with the Division of Legislative Information
48 Services and the Commission on Ethics by means of the
49 division's and the commission's electronic filing systems;
50 providing that such reports are considered to be certified
51 as accurate and complete; providing requirements for the
52 electronic filing system; providing for the Legislature
53 and the commission to adopt rules to administer the
54 electronic filing system; requiring alternate filing
55 procedures; requiring the issuance of electronic receipts;
56 requiring that the division and the commission provide for

57 public access to certain data; amending s. 11.40, F.S.;
58 requiring that the Legislative Auditing Committee conduct
59 random audits of the compensation reports filed by
60 legislative branch and executive branch lobbying firms;
61 providing definitions; prescribing conditions for the
62 random selection; directing the committee to provide for a
63 system to select lobbying firms to be audited; requiring
64 the committee to create and maintain a list of approved
65 auditors; authorizing certain lobbying firms the ability
66 to select an auditor from an approved list; prohibiting an
67 auditor to audit lobbying firms under specified
68 circumstances; requiring a sworn certification from the
69 auditor and the lobbying firm being audited; providing for
70 certain auditors to be solely engaged and compensated by
71 the state; providing the required contents of the audit
72 report; providing for the determination of violations of
73 law to be made by Legislative rule; prescribing a standard
74 of cooperation by lobbying firms being audited; providing
75 guidelines for the committee to establish procedures for
76 the selection of independent contractors; requiring the
77 committee to adopt guidelines that govern random audits
78 and field investigations; requiring that legislative
79 lobbying audit reports be forwarded to the Legislature and
80 executive lobbying audit reports be sent to the Commission
81 on Ethics; specifying the initial reporting period that is
82 subject to the requirements of the act; providing
83 effective dates.

HB 63B

2005

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 11.045, Florida Statutes, is amended to read:

11.045 Lobbying before the Legislature ~~Lobbyists~~; registration and reporting; exemptions; penalties.--

(1) As used in this section, unless the context otherwise requires:

(a) "Committee" means the committee of each house charged by the presiding officer with responsibility for ethical conduct of lobbyists.

(b) "Compensation" means a payment, distribution, loan, advance, reimbursement, deposit, salary, fee, retainer, or anything of value provided or owed to a lobbying firm, directly or indirectly, by a principal for any lobbying activity.

~~(c)(b)~~ "Division" means the Division of Legislative Information Services within the Office of Legislative Services.

~~(d)(e)~~ "Expenditure" means a payment, distribution, loan, advance, reimbursement, deposit, or anything of value made by a lobbyist or principal for the purpose of lobbying. A contribution made to a political party regulated under chapter 103 is not deemed an expenditure for purposes of this section.

~~(e)(d)~~ "Legislative action" means introduction, sponsorship, testimony, debate, voting, or any other official action on any measure, resolution, amendment, nomination, appointment, or report of, or any matter which may be the subject of action by, either house of the Legislature or any committee thereof.

HB 63B

2005

~~(f)(e)~~ "Lobbying" means influencing or attempting to influence legislative action or nonaction through oral or written communication or an attempt to obtain the goodwill of a member or employee of the Legislature.

(g) "Lobbying firm" means any business entity, including an individual contract lobbyist, that receives or becomes entitled to receive any compensation for the purpose of lobbying, where any partner, owner, officer, or employee of the business entity is a lobbyist.

~~(h)(f)~~ "Lobbyist" means a person who is employed and receives payment, or who contracts for economic consideration, for the purpose of lobbying, or a person who is principally employed for governmental affairs by another person or governmental entity to lobby on behalf of that other person or governmental entity.

~~(i)(g)~~ "Principal" means the person, firm, corporation, or other entity which has employed or retained a lobbyist.

(2) Each house of the Legislature shall provide by rule, or may provide by a joint rule adopted by both houses, for the registration of lobbyists who lobby the Legislature. The rule may provide for the payment of a registration fee. The rule may provide for exemptions from registration or registration fees. The rule shall provide that:

(a) Registration is required for each principal represented.

(b) Registration shall include a statement signed by the principal or principal's representative that the registrant is authorized to represent the principal. The principal shall also

HB 63B

2005

identify and designate its main business on the statement
authorizing that lobbyist pursuant to a classification system
approved by the Office of Legislative Services.

(c) A registrant shall promptly send a written statement to the division canceling the registration for a principal upon termination of the lobbyist's representation of that principal. Notwithstanding this requirement, the division may remove the name of a registrant from the list of registered lobbyists if the principal notifies the office that a person is no longer authorized to represent that principal.

(d) Every registrant shall be required to state the extent of any direct business association or partnership with any current member of the Legislature.

(e) Each lobbying firm ~~lobbyist~~ and each principal shall preserve for a period of 4 years all accounts, bills, receipts, computer records, books, papers, and other documents and records necessary to substantiate compensation ~~lobbying expenditures~~. Any documents and records retained pursuant to this section may be subpoenaed for audit by legislative subpoena of either house of the Legislature, and the subpoena inspected under reasonable ~~circumstances by any authorized representative of the~~ Legislature. The right of inspection may be enforced in circuit ~~court by appropriate writ issued by any court of competent~~ jurisdiction.

(f) All registrations shall be open to the public.

(g) Any person who is exempt from registration under the rule shall not be considered a lobbyist for any purpose.

(3) Each house of the Legislature shall provide by rule

the following reporting requirements:

(a)1. Each lobbying firm shall file a compensation report with the division for each calendar quarter during any portion of which one or more of the firm's lobbyists were registered to represent a principal. The report shall include the:

a. Full name, business address, and telephone number of the lobbying firm;

b. Name of each of the firm's lobbyists; and

c. Total compensation provided or owed to the lobbying firm from all principals for the reporting period, reported in one of the following categories: \$0; \$1 to \$49,999; \$50,000 to \$99,999; \$100,000 to \$249,999; \$250,000 to \$499,999; \$500,000 to \$999,999; \$1 million or more.

2. For each principal represented by one or more of the firm's lobbyists, the lobbying firm's compensation report shall also include the:

a. Full name, business address, and telephone number of the principal; and

b. Total compensation provided or owed to the lobbying firm for the reporting period, reported in one of the following categories: \$0; \$1 to \$19,999; \$20,000 to \$39,999; \$40,000 to \$59,999; and \$60,000 or more. If the category "\$60,000 or more" is selected, the specific dollar amount of compensation must be reported, rounded up or down to the nearest \$1,000.

3. If the lobbying firm subcontracts work from another lobbying firm and not from the original principal:

a. The lobbying firm providing the work to be subcontracted shall be treated as the reporting lobbying firm's

principal for reporting purposes under this paragraph; and

b. The reporting lobbying firm shall, for each lobbying firm identified under subparagraph 2., identify the name and address of the principal originating the lobbying work.

4. The senior partner, officer, or owner of the lobbying firm shall certify to the veracity and completeness of the information submitted pursuant to this paragraph.

(b) For each principal represented by more than one lobbying firm, the division shall aggregate the reporting-period and calendar-year compensation reported as provided or owed by the principal.

~~(a) Statements shall be filed by all registered lobbyists two times per year, which must disclose all lobbying expenditures by the lobbyist and the principal and the source of funds for such expenditures. All expenditures made by the lobbyist and the principal for the purpose of lobbying must be reported. Reporting of expenditures shall be made on an accrual basis. The report of such expenditures must identify whether the expenditure was made directly by the lobbyist, directly by the principal, initiated or expended by the lobbyist and paid for by the principal, or initiated or expended by the principal and paid for by the lobbyist. The principal is responsible for the accuracy of the expenditures reported as lobbying expenditures made by the principal. The lobbyist is responsible for the accuracy of the expenditures reported as lobbying expenditures made by the lobbyist. Expenditures made must be reported by the category of the expenditure, including, but not limited to, the categories of food and beverages, entertainment, research,~~

225 ~~communication, media advertising, publications, travel, and~~
226 ~~lodging. Lobbying expenditures do not include a lobbyist's or~~
227 ~~principal's salary, office expenses, and personal expenses for~~
228 ~~lodging, meals, and travel.~~

229 ~~(b) If a principal is represented by two or more~~
230 ~~lobbyists, the first lobbyist who registers to represent that~~
231 ~~principal shall be the designated lobbyist. The designated~~
232 ~~lobbyist's expenditure report shall include all lobbying~~
233 ~~expenditures made directly by the principal and those~~
234 ~~expenditures of the designated lobbyist on behalf of that~~
235 ~~principal as required by paragraph (a). All other lobbyists~~
236 ~~registered to represent that principal shall file a report~~
237 ~~pursuant to paragraph (a). The report of lobbying expenditures~~
238 ~~by the principal shall be made pursuant to the requirements of~~
239 ~~paragraph (a). The principal is responsible for the accuracy of~~
240 ~~figures reported by the designated lobbyist as lobbying~~
241 ~~expenditures made directly by the principal. The designated~~
242 ~~lobbyist is responsible for the accuracy of the figures reported~~
243 ~~as lobbying expenditures made by that lobbyist. Each lobbyist~~
244 ~~shall file an expenditure report for each period during any~~
245 ~~portion of which he or she was registered, and each principal~~
246 ~~shall ensure that an expenditure report is filed for each period~~
247 ~~during any portion of which the principal was represented by a~~
248 ~~registered lobbyist.~~

249 ~~(c) For each reporting period the division shall aggregate~~
250 ~~the expenditures reported by all of the lobbyists for a~~
251 ~~principal represented by more than one lobbyist. Further, the~~
252 ~~division shall aggregate figures that provide a cumulative total~~

HB 63B

2005

~~of expenditures reported as spent by and on behalf of each principal for the calendar year.~~

~~(c)(d)~~ The reporting statements shall be filed no later than 45 days after the end of each ~~the~~ reporting period. The four reporting periods are ~~The first report shall include the expenditures for the period~~ from January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31, respectively ~~June 30. The second report shall disclose expenditures for the period from July 1 through December 31.~~ The statements shall be rendered in the identical form provided by the respective houses and shall be open to public inspection. Reporting statements may be filed by electronic means, when feasible.

~~(d)(e)~~ Reports shall be filed not later than 5 p.m. of the report due date. However, any report that is postmarked by the United States Postal Service no later than midnight of the due date shall be deemed to have been filed in a timely manner, and a certificate of mailing obtained from and dated by the United States Postal Service at the time of the mailing, or a receipt from an established courier company which bears a date on or before the due date, shall be proof of mailing in a timely manner.

~~(e)(f)~~ Each house of the Legislature shall provide by rule, or both houses may provide by joint rule, a procedure by which a lobbying firm that ~~lobbyist who~~ fails to timely file a report shall be notified and assessed fines. The rule shall provide for the following:

1. Upon determining that the report is late, the person

HB 63B

2005

designated to review the timeliness of reports shall immediately notify the lobbying firm ~~lobbyist~~ as to the failure to timely file the report and that a fine is being assessed for each late day. The fine shall be \$50 per day per report for each late day, not to exceed \$5,000 per report.

2. Upon receipt of the report, the person designated to review the timeliness of reports shall determine the amount of the fine due based upon the earliest of the following:

- a. When a report is actually received by the lobbyist registration and reporting office.
- b. When the report is postmarked.
- c. When the certificate of mailing is dated.
- d. When the receipt from an established courier company is dated.

3. Such fine shall be paid within 30 days after the notice of payment due is transmitted by the Lobbyist Registration Office, unless appeal is made to the division. The moneys shall be deposited into the Legislative Lobbyist Registration Trust Fund.

4. A fine shall not be assessed against a lobbying firm ~~lobbyist~~ the first time any reports for which the lobbying firm ~~lobbyist~~ is responsible are not timely filed. However, to receive the one-time fine waiver, all reports for which the lobbying firm ~~lobbyist~~ is responsible must be filed within 30 days after notice that any reports have not been timely filed is transmitted by the Lobbyist Registration Office. A fine shall be assessed for any subsequent late-filed reports.

5. Any lobbying firm ~~lobbyist~~ may appeal or dispute a

HB 63B

2005

fine, based upon unusual circumstances surrounding the failure to file on the designated due date, and may request and shall be entitled to a hearing before the General Counsel of the Office of Legislative Services, who shall recommend to the President of the Senate and the Speaker of the House of Representatives, or their respective designees, that the fine be waived in whole or in part for good cause shown. The President of the Senate and the Speaker of the House of Representatives, or their respective designees, may concur in the recommendation and waive the fine in whole or in part. Any such request shall be made within 30 days after the notice of payment due is transmitted by the Lobbyist Registration Office. In such case, the lobbying firm ~~lobbyist~~ shall, within the 30-day period, notify the person designated to review the timeliness of reports in writing of his or her intention to request a hearing.

6. A lobbying firm ~~lobbyist, a lobbyist's legal representative, or the principal of a lobbyist~~ may request that the filing of a an expenditure report be waived upon good cause shown, based on unusual circumstances. The request must be filed with the General Counsel of the Office of Legislative Services, who shall make a recommendation concerning the waiver request to the President of the Senate and the Speaker of the House of Representatives. The President of the Senate and the Speaker of the House of Representatives may grant or deny the request.

7. All lobbyist registrations for lobbyists who are partners, owners, officers, or employees of a lobbying firm that fails to timely pay a fine are automatically suspended until the fine is paid or waived, and the division shall promptly notify

HB 63B

2005

all affected principals of any suspension or reinstatement. ~~The registration of a lobbyist who fails to timely pay a fine is automatically suspended until the fine is paid or waived.~~

8.7. The person designated to review the timeliness of reports shall notify the director of the division of the failure of a lobbying firm ~~lobbyist~~ to file a report after notice or of the failure of a lobbying firm ~~lobbyist~~ to pay the fine imposed.

(4) (a) Notwithstanding s. 112.3148, s. 112.3149, or any other provision of law to the contrary, no lobbyist or principal shall make, directly or indirectly, and no member or employee of the Legislature shall knowingly accept, directly or indirectly, any lobbying expenditure, except floral arrangements or other celebratory items given to legislators and displayed in chambers the opening day of a regular session.

(b) No person shall provide compensation for lobbying to any individual or business entity that is not a lobbying firm.

(5)~~(4)~~ Each house of the Legislature shall provide by rule a procedure by which a person, when in doubt about the applicability and interpretation of this section in a particular context, may submit in writing the facts for an advisory opinion to the committee of either house and may appear in person before the committee. The rule shall provide a procedure by which:

(a) The committee shall render advisory opinions to any person who seeks advice as to whether the facts in a particular case would constitute a violation of this section.

(b) The committee shall make sufficient deletions to prevent disclosing the identity of persons in the decisions or opinions.

HB 63B

2005

(c) All advisory opinions of the committee shall be numbered, dated, and open to public inspection.

~~(6)(5)~~ Each house of the Legislature shall provide by rule for keeping ~~keep~~ all advisory opinions of the committees relating to lobbying firms, lobbyists, and lobbying activities. ~~as well as~~ The rule shall also provide that each house keep a current list of registered lobbyists along with and their ~~respective~~ reports required of lobbying firms under this section, all of which shall be open for public inspection.

~~(7)(6)~~ Each house of the Legislature shall provide by rule that a the committee of either house shall investigate any person engaged in legislative lobbying upon receipt of a sworn complaint alleging a violation of this section, s. 112.3148, or s. 112.3149 by such person; also, the rule shall provide that a committee of either house investigate any lobbying firm upon receipt of audit information indicating a possible violation other than a late-filed report. Such proceedings shall be conducted pursuant to the rules of the respective houses. If the committee finds that there has been a violation of this section, s. 112.3148, or s. 112.3149, it shall report its findings to the President of the Senate or the Speaker of the House of Representatives, as appropriate, together with a recommended penalty, to include a fine of not more than \$5,000, reprimand, censure, probation, or prohibition from lobbying for a period of time not to exceed 24 months. Upon the receipt of such report, the President of the Senate or the Speaker of the House of Representatives shall cause the committee report and recommendations to be brought before the respective house and a

HB 63B

2005

final determination shall be made by a majority of said house.

(8)~~(7)~~ Any person required to be registered or to provide information pursuant to this section or pursuant to rules established in conformity with this section who knowingly fails to disclose any material fact required by this section or by rules established in conformity with this section, or who knowingly provides false information on any report required by this section or by rules established in conformity with this section, commits a noncriminal infraction, punishable by a fine not to exceed \$5,000. Such penalty shall be in addition to any other penalty assessed by a house of the Legislature pursuant to subsection (7)~~(6)~~.

(9)~~(8)~~ There is hereby created the Legislative Lobbyist Registration Trust Fund, to be used for the purpose of funding any office established for the administration of the registration of lobbyist lobbying the Legislature, including the payment of salaries and other expenses, and for the purpose of paying the expenses incurred by the Legislature in providing services to lobbyists. The trust fund is not subject to the service charge to general revenue provisions of chapter 215. Fees collected pursuant to rules established in accordance with subsection (2) shall be deposited into the Legislative Lobbyist Registration Trust Fund.

Section 2. Effective April 1, 2006, subsection (3) of section 11.045, Florida Statutes, as amended by this act, is amended to read:

11.045 Lobbying before the Legislature; registration and reporting; exemptions; penalties.--

HB 63B

2005

(3) Each house of the Legislature shall provide by rule the following reporting requirements:

(a)1. Each lobbying firm shall file a compensation report with the division for each calendar quarter during any portion of which one or more of the firm's lobbyists were registered to represent a principal. The report shall include the:

a. Full name, business address, and telephone number of the lobbying firm;

b. Name of each of the firm's lobbyists; and

c. Total compensation provided or owed to the lobbying firm from all principals for the reporting period, reported in one of the following categories: \$0; \$1 to \$49,999; \$50,000 to \$99,999; \$100,000 to \$249,999; \$250,000 to \$499,999; \$500,000 to \$999,999; \$1 million or more.

2. For each principal represented by one or more of the firm's lobbyists, the lobbying firm's compensation report shall also include the:

a. Full name, business address, and telephone number of the principal; and

b. Total compensation provided or owed to the lobbying firm for the reporting period, reported in one of the following categories: \$0; \$1 to \$19,999; \$20,000 to \$39,999; \$40,000 to \$59,999; and \$60,000 or more. If the category "\$60,000 or more" is selected, the specific dollar amount of compensation must be reported, rounded up or down to the nearest \$1,000.

3. If the lobbying firm subcontracts work from another lobbying firm and not from the original principal:

a. The lobbying firm providing the work to be

HB 63B

2005

subcontracted shall be treated as the reporting lobbying firm's principal for reporting purposes under this paragraph; and

b. The reporting lobbying firm shall, for each lobbying firm identified under subparagraph 2., identify the name and address of the principal originating the lobbying work.

4. The senior partner, officer, or owner of the lobbying firm shall certify to the veracity and completeness of the information submitted pursuant to this paragraph.

(b) For each principal represented by more than one lobbying firm, the division shall aggregate the reporting-period and calendar-year compensation reported as provided or owed by the principal.

(c) The reporting statements shall be filed no later than 45 days after the end of each reporting period. The four reporting periods are from January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31, respectively. The statements shall be rendered in the identical form provided by the respective houses and shall be open to public inspection. Reporting statements must ~~may~~ be filed by electronic means as provided in s. 11.0455- ~~when feasible.~~

~~(d) Reports shall be filed not later than 5 p.m. of the report due date. However, any report that is postmarked by the United States Postal Service no later than midnight of the due date shall be deemed to have been filed in a timely manner, and a certificate of mailing obtained from and dated by the United States Postal Service at the time of the mailing, or a receipt from an established courier company which bears a date on or~~

HB 63B

2005

~~before the due date, shall be proof of mailing in a timely manner.~~

(d)(e) Each house of the Legislature shall provide by rule, or both houses may provide by joint rule, a procedure by which a lobbying firm that fails to timely file a report shall be notified and assessed fines. The rule shall provide for the following:

1. Upon determining that the report is late, the person designated to review the timeliness of reports shall immediately notify the lobbying firm as to the failure to timely file the report and that a fine is being assessed for each late day. The fine shall be \$50 per day per report for each late day, not to exceed \$5,000 per report.

2. Upon receipt of the report, the person designated to review the timeliness of reports shall determine the amount of the fine due based upon the earliest of the following:

a. When a report is actually received by the lobbyist registration and reporting office.

b. When the electronic receipt issued pursuant to s. 11.0455 is dated. ~~When the report is postmarked.~~

~~c. When the certificate of mailing is dated.~~

~~d. When the receipt from an established courier company is dated.~~

3. Such fine shall be paid within 30 days after the notice of payment due is transmitted by the Lobbyist Registration Office, unless appeal is made to the division. The moneys shall be deposited into the Legislative Lobbyist Registration Trust Fund.

505 4. A fine shall not be assessed against a lobbying firm
506 the first time any reports for which the lobbying firm is
507 responsible are not timely filed. However, to receive the one-
508 time fine waiver, all reports for which the lobbying firm is
509 responsible must be filed within 30 days after notice that any
510 reports have not been timely filed is transmitted by the
511 Lobbyist Registration Office. A fine shall be assessed for any
512 subsequent late-filed reports.

513 5. Any lobbying firm may appeal or dispute a fine, based
514 upon unusual circumstances surrounding the failure to file on
515 the designated due date, and may request and shall be entitled
516 to a hearing before the General Counsel of the Office of
517 Legislative Services, who shall recommend to the President of
518 the Senate and the Speaker of the House of Representatives, or
519 their respective designees, that the fine be waived in whole or
520 in part for good cause shown. The President of the Senate and
521 the Speaker of the House of Representatives, or their respective
522 designees, may concur in the recommendation and waive the fine
523 in whole or in part. Any such request shall be made within 30
524 days after the notice of payment due is transmitted by the
525 Lobbyist Registration Office. In such case, the lobbying firm
526 shall, within the 30-day period, notify the person designated to
527 review the timeliness of reports in writing of his or her
528 intention to request a hearing.

529 6. A lobbying firm may request that the filing of a report
530 be waived upon good cause shown, based on unusual circumstances.
531 The request must be filed with the General Counsel of the Office
532 of Legislative Services, who shall make a recommendation

HB 63B

2005

concerning the waiver request to the President of the Senate and the Speaker of the House of Representatives. The President of the Senate and the Speaker of the House of Representatives may grant or deny the request.

7. All lobbyist registrations for lobbyists who are partners, owners, officers, or employees of a lobbying firm that fails to timely pay a fine are automatically suspended until the fine is paid or waived, and the division shall promptly notify all affected principals of any suspension or reinstatement.

8. The person designated to review the timeliness of reports shall notify the director of the division of the failure of a lobbying firm to file a report after notice or of the failure of a lobbying firm to pay the fine imposed.

Section 3. Effective April 1, 2006, section 11.0455, Florida Statutes, is created to read:

11.0455 Electronic filing of compensation reports and other information.--

(1) As used in this section, the term "electronic filing system" means an Internet system for recording and reporting lobbying compensation and other required information by reporting period.

(2) Each lobbying firm that is required to file reports with the Division of Legislative Information Services pursuant to s. 11.045 must file such reports with the division by means of the division's electronic filing system.

(3) A report filed pursuant to this section must be completed and filed through the electronic filing system not later than 11:59 p.m. of the day designated in s. 11.045. A

HB 63B

2005

report not filed by 11:59 p.m. of the day designated is a late-
filed report and is subject to the penalties under s. 11.045(3).

(4) Each report filed pursuant to this section is
considered to be certified as accurate and complete by the
lobbying firm, and such firm is subject to the provisions of ss.
11.045(7) and (8). Persons given a secure sign-on to the
electronic filing system are responsible for protecting it from
disclosure and are responsible for all filings using such
credentials, unless they have notified the division that their
credentials have been compromised.

(5) The electronic filing system developed by the division
must:

(a) Be based on access by means of the Internet.

(b) Be accessible by anyone with Internet access using
standard web-browsing software.

(c) Provide for direct entry of compensation-report
information as well as upload of such information from software
authorized by the division.

(d) Provide a method that prevents unauthorized access to
electronic filing system functions.

(6) Each house of the Legislature shall provide by rule,
or may provide by a joint rule adopted by both houses,
procedures to implement and administer this section, including,
but not limited to:

(a) Alternate filing procedures in case the division's
electronic filing system is not operable.

(b) The issuance of an electronic receipt to the person
submitting the report indicating and verifying the date and time

589 that the report was filed.

590 (7) Each house of the Legislature shall provide by rule
591 that the division make all the data filed available on the
592 Internet in an easily understood and accessible format. The
593 Internet website shall also include, but not be limited to, the
594 names and business addresses of lobbyists, lobbying firms, and
595 principals, the affiliations between lobbyists and principals,
596 and the classification system designated and identified by each
597 principal pursuant to s. 11.045(2).

598 Section 4. Effective January 1, 2007, subsection (6) is
599 added to section 11.40, Florida Statutes, to read:

600 11.40 Legislative Auditing Committee.--

601 (6) (a) As used in this subsection, "independent contract
602 auditor" means a state-licensed certified public accountant or
603 firm with which a state-licensed certified public accountant is
604 currently employed or associated who is actively engaged in the
605 accounting profession.

606 (b) Audits specified in this subsection cover the
607 quarterly compensation reports for the previous calendar year
608 for a random sample of 3 percent of all legislative branch
609 lobbying firms and a random sample of 3 percent of all executive
610 branch lobbying firms calculated using as the total number of
611 such lobbying firms those that were registered as of April 1 of
612 the preceding calendar year. The committee shall provide for a
613 system of random selection of the lobbying firms to be audited.

614 (c) The committee shall create and maintain a list of not
615 less than 10 independent contract auditors approved to conduct
616 the required audits. Each lobbying firm selected for audit in

HB 63B

2005

the random audit process may designate one of the independent contract auditors from the committee's approved list. Upon failure for any reason of a lobbying firm selected in the random selection process to designate an independent contract auditor from the committee's list within 30 calendar days after being notified by the committee of its selection, the committee shall assign one of the available independent contract auditors from the approved list to perform the required audit. No independent contract auditor, whether designated by the lobbying firm or by the committee, may perform the audit of a lobbying firm where the auditor and lobbying firm have ever had a direct personal relationship or any professional accounting, auditing, tax advisory, or tax preparing relationship with each other. The committee shall obtain a written, sworn certification subject to s. 837.06, both from the randomly selected lobbying firm and from the proposed independent contract auditor, that no such relationship has ever existed.

(d) Each independent contract auditor shall be engaged by and compensated solely by the state for the work performed in accomplishing an audit under this subsection.

(e) Any violations of law, deficiencies, or material misstatements discovered and noted in an audit report shall be clearly identified in the audit report and be determined under the rules of either house of the Legislature or under the joint rules, as applicable.

(f) If any lobbying firm fails to give full, frank, and prompt cooperation and access to books, records, and associated backup documents as requested in writing by the auditor, that

HB 63B

2005

failure shall be clearly noted by the independent contract auditor in the report of audit.

(g) The committee shall establish procedures for the selection of independent contract auditors desiring to enter into audit contracts pursuant to this subsection. Such procedures shall include, but not be limited to, a rating system that takes into account pertinent information, including the independent contract auditor's fee proposals for participating in the process. All contracts under this subsection between an independent contract auditor and the Speaker of the House of Representatives and the President of the Senate shall be terminable by either party at any time upon written notice to the other, and such contracts may contain such other terms and conditions as the Speaker of the House of Representatives and the President of the Senate deem appropriate under the circumstances.

(h) The committee shall adopt guidelines that govern random audits and field investigations conducted pursuant to this subsection. The guidelines shall ensure that similarly situated compensation reports are audited in a uniform manner. The guidelines shall also be formulated to encourage compliance and detect violations of the legislative and executive lobbying compensation reporting requirements in ss. 11.045 and 112.3215 and to ensure that each audit is conducted with maximum efficiency in a cost-effective manner. In adopting the guidelines, the committee shall consider relevant guidelines and standards of the American Institute of Certified Public Accountants to the extent that such guidelines and standards are

HB 63B

2005

applicable and consistent with the purposes set forth in this subsection.

(i) All audit reports of legislative lobbying firms shall, upon completion by an independent contract auditor, be delivered to the President of the Senate and the Speaker of the House of Representatives for their respective review and handling. All audit reports of executive branch lobbyists, upon completion by an independent contract auditor, shall be delivered by the auditor to the Commission on Ethics for handling under the Code of Ethics.

Section 5. Section 112.3215, Florida Statutes, is amended to read:

112.3215 Lobbying ~~Lobbyists~~ before the executive branch or the Constitution Revision Commission; registration and reporting; investigation by commission.--

(1) For the purposes of this section:

(a) "Agency" means the Governor, Governor and Cabinet, or any department, division, bureau, board, commission, or authority of the executive branch. In addition, "agency" shall mean the Constitution Revision Commission as provided by s. 2, Art. XI of the State Constitution.

(b) "Agency official" or "employee" means any individual who is required by law to file full or limited public disclosure of his or her financial interests.

(c) "Compensation" means a payment, distribution, loan, advance, reimbursement, deposit, salary, fee, retainer, or anything of value provided or owed to a lobbying firm, directly or indirectly, by a principal for any lobbying activity.

HB 63B

2005

(d)~~(b)~~ "Expenditure" means a payment, distribution, loan, advance, reimbursement, deposit, or anything of value made by a lobbyist or principal for the purpose of lobbying. A contribution made to a political party regulated under chapter 103 is not deemed an expenditure for purposes of this section.

(e)~~(e)~~ "Fund" means the Executive Branch Lobby Registration Trust Fund.

(f)~~(d)~~ "Lobbies" means seeking, on behalf of another person, to influence an agency with respect to a decision of the agency in the area of policy or procurement or an attempt to obtain the goodwill of an agency official or employee. "Lobbies" also means influencing or attempting to influence, on behalf of another, the Constitution Revision Commission's action or nonaction through oral or written communication or an attempt to obtain the goodwill of a member or employee of the Constitution Revision Commission.

(g) "Lobbying firm" means a business entity, including an individual contract lobbyist, that receives or becomes entitled to receive any compensation for the purpose of lobbying, where any partner, owner, officer, or employee of the business entity is a lobbyist.

(h)~~(e)~~ "Lobbyist" means a person who is employed and receives payment, or who contracts for economic consideration, for the purpose of lobbying, or a person who is principally employed for governmental affairs by another person or governmental entity to lobby on behalf of that other person or governmental entity. "Lobbyist" does not include a person who is:

HB 63B

2005

1. An attorney, or any person, who represents a client in a judicial proceeding or in a formal administrative proceeding conducted pursuant to chapter 120 or any other formal hearing before an agency, board, commission, or authority of this state.

2. An employee of an agency or of a legislative or judicial branch entity acting in the normal course of his or her duties.

3. A confidential informant who is providing, or wishes to provide, confidential information to be used for law enforcement purposes.

4. A person who lobbies to procure a contract pursuant to chapter 287 which contract is less than the threshold for CATEGORY ONE as provided in s. 287.017(1)(a).

(i)~~(f)~~ "Principal" means the person, firm, corporation, or other entity which has employed or retained a lobbyist.

(2) The Executive Branch Lobby Registration Trust Fund is hereby created within the commission to be used for the purpose of funding any office established to administer the registration of lobbyists lobbying an agency, including the payment of salaries and other expenses. The trust fund is not subject to the service charge to General Revenue provisions of chapter 215. All annual registration fees collected pursuant to this section shall be deposited into such fund.

(3) A person may not lobby an agency until such person has registered as a lobbyist with the commission. Such registration shall be due upon initially being retained to lobby and is renewable on a calendar year basis thereafter. Upon registration the person shall provide a statement signed by the principal or

HB 63B

2005

principal's representative that the registrant is authorized to represent the principal. The principal shall also identify and designate its main business on the statement authorizing that lobbyist pursuant to a classification system approved by the commission. The registration shall require each ~~the~~ lobbyist to disclose, under oath, the following information:

(a) Name and business address;

(b) The name and business address of each principal represented;

(c) His or her area of interest;

(d) The agencies before which he or she will appear; and

(e) The existence of any direct or indirect business association, partnership, or financial relationship with any employee of an agency with which he or she lobbies, or intends to lobby, as disclosed in the registration.

(4) The annual lobbyist registration fee shall be set by the commission by rule, not to exceed \$40 for each principal represented.

(5)(a)1. Each lobbying firm shall file a compensation report with the commission for each calendar quarter during any portion of which one or more of the firm's lobbyists were registered to represent a principal. The report shall include the:

a. Full name, business address, and telephone number of the lobbying firm;

b. Name of each of the firm's lobbyists; and

c. Total compensation provided or owed to the lobbying firm from all principals for the reporting period, reported in

HB 63B

2005

one of the following categories: \$0; \$1 to \$49,999; \$50,000 to \$99,999; \$100,000 to \$249,999; \$250,000 to \$499,999; \$500,000 to \$999,999; \$1 million or more.

2. For each principal represented by one or more of the firm's lobbyists, the lobbying firm's compensation report shall also include the:

a. Full name, business address, and telephone number of the principal; and

b. Total compensation provided or owed to the lobbying firm for the reporting period, reported in one of the following categories: \$0; \$1 to \$19,999; \$20,000 to \$39,999; \$40,000 to \$59,999; and \$60,000 or more. If the category "\$60,000 or more" is selected, the specific dollar amount of compensation must be reported, rounded up or down to the nearest \$1,000.

3. If the lobbying firm subcontracts work from another lobbying firm and not from the original principal:

a. The lobbying firm providing the work to be subcontracted shall be treated as the reporting lobbying firm's principal for reporting purposes under this paragraph; and

b. The reporting lobbying firm shall, for each lobbying firm identified under subparagraph 2., identify the name and address of the principal originating the lobbying work.

4. The senior partner, officer, or owner of the lobbying firm shall certify to the veracity and completeness of the information submitted pursuant to this paragraph.

(b) For each principal represented by more than one lobbying firm, the commission shall aggregate the reporting-period and calendar-year compensation reported as provided or

owed by the principal.

~~(a) A registered lobbyist must also submit to the commission, biannually, a signed expenditure report summarizing all lobbying expenditures by the lobbyist and the principal for each 6 month period during any portion of which the lobbyist is registered. All expenditures made by the lobbyist and the principal for the purpose of lobbying must be reported. Reporting of expenditures shall be on an accrual basis. The report of such expenditures must identify whether the expenditure was made directly by the lobbyist, directly by the principal, initiated or expended by the lobbyist and paid for by the principal, or initiated or expended by the principal and paid for by the lobbyist. The principal is responsible for the accuracy of the expenditures reported as lobbying expenditures made by the principal. The lobbyist is responsible for the accuracy of the expenditures reported as lobbying expenditures made by the lobbyist. Expenditures made must be reported by the category of the expenditure, including, but not limited to, the categories of food and beverages, entertainment, research, communication, media advertising, publications, travel, and lodging. Lobby expenditures do not include a lobbyist's or principal's salary, office expenses, and personal expenses for lodging, meals, and travel.~~

~~(b) A principal who is represented by two or more lobbyists shall designate one lobbyist whose expenditure report shall include all lobbying expenditures made directly by the principal and those expenditures of the designated lobbyist on behalf of that principal as required by paragraph (a). All other~~

HB 63B

2005

~~lobbyists registered to represent that principal shall file a report pursuant to paragraph (a). The report of lobbying expenditures by the principal shall be made pursuant to the requirements of paragraph (a). The principal is responsible for the accuracy of figures reported by the designated lobbyist as lobbying expenditures made directly by the principal. The designated lobbyist is responsible for the accuracy of the figures reported as lobbying expenditures made by that lobbyist.~~

~~(c) For each reporting period the commission shall aggregate the expenditures of all lobbyists for a principal represented by more than one lobbyist. Further, the commission shall aggregate figures that provide a cumulative total of expenditures reported as spent by and on behalf of each principal for the calendar year.~~

~~(c)(d)~~ The reporting statements shall be filed no later than 45 days after the end of each reporting period. ~~and shall include the expenditures for the period~~ The four reporting periods are from January 1 through March 31, June 30, April 1 through June 30, and July 1 through September 30, and October 1 through December 31, respectively.

~~(d)(e)~~ Reports shall be filed not later than 5 p.m. of the report due date. However, any report that is postmarked by the United States Postal Service no later than midnight of the due date shall be deemed to have been filed in a timely manner, and a certificate of mailing obtained from and dated by the United States Postal Service at the time of the mailing, or a receipt from an established courier company which bears a date on or before the due date, shall be proof of mailing in a timely

HB 63B

2005

manner.

~~(e)-(f)~~ The commission shall provide by rule a procedure by which a lobbying firm that ~~lobbyist who~~ fails to timely file a report shall be notified and assessed fines. The rule shall provide for the following:

1. Upon determining that the report is late, the person designated to review the timeliness of reports shall immediately notify the lobbying firm ~~lobbyist~~ as to the failure to timely file the report and that a fine is being assessed for each late day. The fine shall be \$50 per day per report for each late day up to a maximum of \$5,000 per late report.

2. Upon receipt of the report, the person designated to review the timeliness of reports shall determine the amount of the fine due based upon the earliest of the following:

a. When a report is actually received by the lobbyist registration and reporting office.

b. When the report is postmarked.

c. When the certificate of mailing is dated.

d. When the receipt from an established courier company is dated.

3. Such fine shall be paid within 30 days after the notice of payment due is transmitted by the Lobbyist Registration Office, unless appeal is made to the commission. The moneys shall be deposited into the Executive Branch Lobby Registration Trust Fund.

4. A fine shall not be assessed against a lobbying firm ~~lobbyist~~ the first time any reports for which the lobbying firm ~~lobbyist~~ is responsible are not timely filed. However, to

897 receive the one-time fine waiver, all reports for which the
898 lobbying firm ~~lobbyist~~ is responsible must be filed within 30
899 days after the notice that any reports have not been timely
900 filed is transmitted by the Lobbyist Registration Office. A fine
901 shall be assessed for any subsequent late-filed reports.

902 5. Any lobbying firm ~~lobbyist~~ may appeal or dispute a
903 fine, based upon unusual circumstances surrounding the failure
904 to file on the designated due date, and may request and shall be
905 entitled to a hearing before the commission, which shall have
906 the authority to waive the fine in whole or in part for good
907 cause shown. Any such request shall be made within 30 days after
908 the notice of payment due is transmitted by the Lobbyist
909 Registration Office. In such case, the lobbying firm ~~lobbyist~~
910 shall, within the 30-day period, notify the person designated to
911 review the timeliness of reports in writing of his or her
912 intention to bring the matter before the commission.

913 6. The person designated to review the timeliness of
914 reports shall notify the commission of the failure of a lobbying
915 firm ~~lobbyist~~ to file a report after notice or of the failure of
916 a lobbying firm ~~lobbyist~~ to pay the fine imposed.

917 7. Notwithstanding any provision of chapter 120, any fine
918 imposed under this subsection that is not waived by final order
919 of the commission and that remains unpaid more than 60 days
920 after the notice of payment due or more than 60 days after the
921 commission renders a final order on the lobbying firm's
922 ~~lobbyist's~~ appeal shall be collected by the Department of
923 Financial Services as a claim, debt, or other obligation owed to
924 the state, and the department may assign the collection of such

HB 63B

2005

fine to a collection agent as provided in s. 17.20.

~~(f)(g)~~ The commission shall adopt a rule which allows reporting statements to be filed by electronic means, when feasible.

~~(g)(h)~~ Each lobbying firm ~~lobbyist~~ and each principal shall preserve for a period of 4 years all accounts, bills, receipts, computer records, books, papers, and other documents and records necessary to substantiate compensation ~~lobbying expenditures~~. Any documents and records retained pursuant to this section may be subpoenaed for audit by the Legislative Auditing Committee pursuant to s. 11.40, and such subpoena inspected under reasonable circumstances by any authorized representative of the commission. ~~The right of inspection may be enforced in circuit court by appropriate writ issued by any court of competent jurisdiction.~~

(6)(a) Notwithstanding s. 112.3148, s. 112.3149, or any other provision of law to the contrary, no lobbyist or principal shall make, directly or indirectly, and no agency official, member, or employee shall knowingly accept, directly or indirectly, any lobbying expenditure.

(b) No person shall provide compensation for lobbying to any individual or business entity that is not a lobbying firm.

~~(7)(6)~~ A lobbyist shall promptly send a written statement to the commission canceling the registration for a principal upon termination of the lobbyist's representation of that principal. Notwithstanding this requirement, the commission may remove the name of a lobbyist from the list of registered lobbyists if the principal notifies the office that a person is

HB 63B

2005

no longer authorized to represent that principal. ~~Each lobbyist is responsible for filing an expenditure report for each period during any portion of which he or she was registered, and each principal is responsible for seeing that an expenditure report is filed for each period during any portion of which the principal was represented by a registered lobbyist.~~

(8) (a) (7) The commission shall investigate every sworn complaint that is filed with it alleging that a person covered by this section has failed to register, has failed to submit a compensation ~~an expenditure~~ report, or has knowingly submitted false information in any report or registration required in this section.

(b) All proceedings, the complaint, and other records relating to the investigation are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, and any meetings held pursuant to an investigation are exempt from the provisions of s. 286.011(1) and s. 24(b), Art. I of the State Constitution either until the alleged violator requests in writing that such investigation and associated records and meetings be made public or until the commission determines, based on the investigation, whether probable cause exists to believe that a violation has occurred.

(c) The commission shall investigate any lobbying firm, agency, officer, or employee upon receipt of information from a sworn complaint or from a random audit of lobbying reports indicating a possible violation other than a late-filed report.

(9) (8) If the commission finds no probable cause to believe that a violation of this section occurred, it shall

HB 63B

2005

981 dismiss the complaint, whereupon the complaint, together with a
 982 written statement of the findings of the investigation and a
 983 summary of the facts, shall become a matter of public record,
 984 and the commission shall send a copy of the complaint, findings,
 985 and summary to the complainant and the alleged violator. If,
 986 after investigating information from a random audit of lobbying
 987 reports, the commission finds no probable cause to believe that
 988 a violation of this section occurred, a written statement of the
 989 findings of the investigation and a summary of the facts shall
 990 become a matter of public record, and the commission shall send
 991 a copy of the findings and summary to the alleged violator. If
 992 the commission finds probable cause to believe that a violation
 993 occurred, it shall report the results of its investigation to
 994 the Governor and Cabinet and send a copy of the report to the
 995 alleged violator by certified mail. Such notification and all
 996 documents made or received in the disposition of the complaint
 997 shall then become public records. Upon request submitted to the
 998 Governor and Cabinet in writing, any person whom the commission
 999 finds probable cause to believe has violated any provision of
 1000 this section shall be entitled to a public hearing. Such person
 1001 shall be deemed to have waived the right to a public hearing if
 1002 the request is not received within 14 days following the mailing
 1003 of the probable cause notification. However, the Governor and
 1004 Cabinet may on its own motion require a public hearing and may
 1005 conduct such further investigation as it deems necessary.

1006 (10) ~~(9)~~ If the Governor and Cabinet finds that a violation
 1007 occurred, it may reprimand the violator, censure the violator,
 1008 or prohibit the violator from lobbying all agencies for a period

HB 63B

2005

not to exceed 2 years. If the violator is a lobbying firm, the Governor and Cabinet may also assess a fine of not more than \$5,000 to be deposited in the Executive Branch Lobby Registration Trust Fund.

(11)~~(10)~~ Any person, when in doubt about the applicability and interpretation of this section to himself or herself in a particular context, may submit in writing the facts of the situation to the commission with a request for an advisory opinion to establish the standard of duty. An advisory opinion shall be rendered by the commission and, until amended or revoked, shall be binding on the conduct of the person who sought the opinion, unless material facts were omitted or misstated in the request.

(12)~~(11)~~ Agencies shall be diligent to ascertain whether persons required to register pursuant to this section have complied. An agency may not knowingly permit a person who is not registered pursuant to this section to lobby the agency.

(13)~~(12)~~ Upon discovery of violations of this section an agency or any person may file a sworn complaint with the commission.

(14)~~(13)~~ The commission shall adopt rules to administer this section, which shall prescribe forms for registration and compensation ~~expenditure~~ reports, procedures for registration, and procedures that will prevent disclosure of information that is confidential as provided in this section.

Section 6. Effective April 1, 2006, subsection (5) of section 112.3215, Florida Statutes, as amended by this act, is amended to read:

HB 63B

2005

112.3215 Lobbying before the executive branch or the
Constitution Revision Commission; registration and reporting;
investigation by commission.--

(5)(a)1. Each lobbying firm shall file a compensation
report with the commission for each calendar quarter during any
portion of which one or more of the firm's lobbyists were
registered to represent a principal. The report shall include
the:

a. Full name, business address, and telephone number of
the lobbying firm;

b. Name of each of the firm's lobbyists; and

c. Total compensation provided or owed to the lobbying
firm from all principals for the reporting period, reported in
one of the following categories: \$0; \$1 to \$49,999; \$50,000 to
\$99,999; \$100,000 to \$249,999; \$250,000 to \$499,999; \$500,000 to
\$999,999; \$1 million or more.

2. For each principal represented by one or more of the
firm's lobbyists, the lobbying firm's compensation report shall
also include the:

a. Full name, business address, and telephone number of
the principal; and

b. Total compensation provided or owed to the lobbying
firm for the reporting period, reported in one of the following
categories: \$0; \$1 to \$19,999; \$20,000 to \$39,999; \$40,000 to
\$59,999; and \$60,000 or more. If the category "\$60,000 or more"
is selected, the specific dollar amount of compensation must be
reported, rounded up or down to the nearest \$1,000.

3. If the lobbying firm subcontracts work from another

HB 63B

2005

1065 lobbying firm and not from the original principal:
 1066 a. The lobbying firm providing the work to be
 1067 subcontracted shall be treated as the reporting lobbying firm's
 1068 principal for reporting purposes under this paragraph; and
 1069 b. The reporting lobbying firm shall, for each lobbying
 1070 firm identified under subparagraph 2., identify the name and
 1071 address of the principal originating the lobbying work.
 1072 4. The senior partner, officer, or owner of the lobbying
 1073 firm shall certify to the veracity and completeness of the
 1074 information submitted pursuant to this paragraph.
 1075 (b) For each principal represented by more than one
 1076 lobbying firm, the commission shall aggregate the reporting-
 1077 period and calendar-year compensation reported as provided or
 1078 owed by the principal.
 1079 (c) The reporting statements shall be filed no later than
 1080 45 days after the end of each reporting period. The four
 1081 reporting periods are from January 1 through March 31, April 1
 1082 through June 30, July 1 through September 30, and October 1
 1083 through December 31, respectively. Reporting statements must be
 1084 filed by electronic means as provided in s. 112.32155.
 1085 ~~(d) Reports shall be filed not later than 5 p.m. of the~~
 1086 ~~report due date. However, any report that is postmarked by the~~
 1087 ~~United States Postal Service no later than midnight of the due~~
 1088 ~~date shall be deemed to have been filed in a timely manner, and~~
 1089 ~~a certificate of mailing obtained from and dated by the United~~
 1090 ~~States Postal Service at the time of the mailing, or a receipt~~
 1091 ~~from an established courier company which bears a date on or~~
 1092 ~~before the due date, shall be proof of mailing in a timely~~

HB 63B

2005

1093 ~~manner.~~

1094 (d)~~(e)~~ The commission shall provide by rule a procedure by
1095 which a lobbying firm that fails to timely file a report shall
1096 be notified and assessed fines. The rule shall provide for the
1097 following:

1098 1. Upon determining that the report is late, the person
1099 designated to review the timeliness of reports shall immediately
1100 notify the lobbying firm as to the failure to timely file the
1101 report and that a fine is being assessed for each late day. The
1102 fine shall be \$50 per day per report for each late day up to a
1103 maximum of \$5,000 per late report.

1104 2. Upon receipt of the report, the person designated to
1105 review the timeliness of reports shall determine the amount of
1106 the fine due based upon the earliest of the following:

1107 a. When a report is actually received by the lobbyist
1108 registration and reporting office.

1109 b. When the electronic receipt issued pursuant to s.
1110 112.32155 is dated. ~~When the report is postmarked.~~

1111 ~~c. When the certificate of mailing is dated.~~

1112 ~~d. When the receipt from an established courier company is~~
1113 ~~dated.~~

1114 3. Such fine shall be paid within 30 days after the notice
1115 of payment due is transmitted by the Lobbyist Registration
1116 Office, unless appeal is made to the commission. The moneys
1117 shall be deposited into the Executive Branch Lobby Registration
1118 Trust Fund.

1119 4. A fine shall not be assessed against a lobbying firm
1120 the first time any reports for which the lobbying firm is

HB 63B

2005

1121 responsible are not timely filed. However, to receive the one-
1122 time fine waiver, all reports for which the lobbying firm is
1123 responsible must be filed within 30 days after the notice that
1124 any reports have not been timely filed is transmitted by the
1125 Lobbyist Registration Office. A fine shall be assessed for any
1126 subsequent late-filed reports.

1127 5. Any lobbying firm may appeal or dispute a fine, based
1128 upon unusual circumstances surrounding the failure to file on
1129 the designated due date, and may request and shall be entitled
1130 to a hearing before the commission, which shall have the
1131 authority to waive the fine in whole or in part for good cause
1132 shown. Any such request shall be made within 30 days after the
1133 notice of payment due is transmitted by the Lobbyist
1134 Registration Office. In such case, the lobbying firm shall,
1135 within the 30-day period, notify the person designated to review
1136 the timeliness of reports in writing of his or her intention to
1137 bring the matter before the commission.

1138 6. The person designated to review the timeliness of
1139 reports shall notify the commission of the failure of a lobbying
1140 firm to file a report after notice or of the failure of a
1141 lobbying firm to pay the fine imposed.

1142 7. Notwithstanding any provision of chapter 120, any fine
1143 imposed under this subsection that is not waived by final order
1144 of the commission and that remains unpaid more than 60 days
1145 after the notice of payment due or more than 60 days after the
1146 commission renders a final order on the lobbying firm's appeal
1147 shall be collected by the Department of Financial Services as a
1148 claim, debt, or other obligation owed to the state, and the

HB 63B

2005

department may assign the collection of such fine to a collection agent as provided in s. 17.20.

~~(f) The commission shall adopt a rule which allows reporting statements to be filed by electronic means, when feasible.~~

~~(e)(g)~~ Each lobbying firm and each principal shall preserve for a period of 4 years all accounts, bills, receipts, computer records, books, papers, and other documents and records necessary to substantiate compensation. Any documents and records retained pursuant to this section may be subpoenaed for audit by the Legislative Auditing Committee pursuant to s. 11.40, and such subpoena may be enforced in circuit court.

Section 7. Effective April 1, 2006, section 112.32155, Florida Statutes, is created to read:

112.32155 Electronic filing of compensation reports and other information.--

(1) As used in this section, the term "electronic filing system" means an Internet system for recording and reporting lobbying compensation and other required information by reporting period.

(2) Each lobbying firm who is required to file reports with the Commission on Ethics pursuant to s. 112.3215 must file such reports with the commission by means of the electronic filing system.

(3) A report filed pursuant to this section must be completed and filed through the electronic filing system not later than 11:59 p.m. of the day designated in s. 112.3215. A report not filed by 11:59 p.m. of the day designated is a late-

HB 63B

2005

1177 filed report and is subject to the penalties under s.
1178 112.3215(5).

1179 (4) Each report filed pursuant to this section is
1180 considered to be certified as accurate and complete by the
1181 lobbying firm. Persons given a secure sign-on to the electronic
1182 filing system are responsible for protecting it from disclosure
1183 and are responsible for all filings using such credentials,
1184 unless they have notified the commission that their credentials
1185 have been compromised.

1186 (5) The electronic filing system must:

1187 (a) Be based on access by means of the Internet.

1188 (b) Be accessible by anyone with Internet access using
1189 standard web-browsing software.

1190 (c) Provide for direct entry of compensation-report
1191 information as well as upload of such information from software
1192 authorized by the commission.

1193 (d) Provide a method that prevents unauthorized access to
1194 electronic filing system functions.

1195 (6) The commission shall provide by rule procedures to
1196 implement and administer this section, including, but not
1197 limited to:

1198 (a) Alternate filing procedures in case the electronic
1199 filing system is not operable.

1200 (b) The issuance of an electronic receipt to the person
1201 submitting the report indicating and verifying the date and time
1202 that the report was filed.

1203 (7) The commission shall make all the data filed available
1204 on the Internet in an easily understood and accessible format.

HB 63B

2005

1205 The Internet web site shall also include, but not be limited to,
1206 the names and business addresses of lobbyists, lobbying firms,
1207 and principals, affiliations between lobbyists and principals,
1208 and the classification system designated and identified by each
1209 principal pursuant to s. 112.3215(3).

1210 Section 8. The first compensation reports subject to the
1211 amended reporting requirements in this act must be filed by May
1212 15, 2006, and encompass the reporting period from January 1,
1213 2006, through March 31, 2006.

1214 Section 9. Except as otherwise expressly provided in this
1215 act, this act shall take effect January 1, 2006.

HB 65B

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 65B
SPONSOR(S): Reagan
TIED BILLS: HB 63B

Public Records and Public Meetings Exemptions for Lobbying

IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Ethics & Elections Committee	8 Y, 2 N	Williamson	Mitchell
2) State Administration Council		Williamson <i>hau</i>	Bussey <i>JB</i>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The bill creates a public records exemption for records relating to an audit of a lobbying firm or an investigation of violations of the lobbying compensation reporting laws. It creates a public meetings exemption for meetings of the Commission on Ethics at which confidential and exempt audit or investigative information is discussed. Such records and meetings are open to the public under certain circumstances. The bill provides for future review and repeal of the exemptions and provides a statement of public necessity and a contingent effective date.

The bill appears to have a minimal fiscal impact on state government. See FISCAL COMMENTS section for further details. It does not appear to have a fiscal impact on local governments.

The bill requires a two-thirds vote of the members present and voting for passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill decreases public access to records and meetings of the Commission on Ethics.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

HB 63B authorizes the Legislative Auditing Committee to conduct random audits and field investigations of lobbying firms. It also authorizes the Commission on Ethics to investigate any lobbying firm upon receipt of information from a sworn complaint or random audit of lobbying reports indicating a possible violation other than a late-filed report.

EFFECT OF BILL

HB 65B creates a public records exemption for records relating to an audit of a lobbying firm lobbying the executive branch or the Constitution Revision Commission. It also creates a public records exemption for records relating to an investigation of violations of the lobbying compensation reporting laws for the executive branch or the Constitution Revision Commission.

Current law provides a public records exemption for records held by the legislative branch of government which, if held by an agency would be confidential or exempt from public records requirements.¹ As such, the public records exemption created by this bill also applies to the same type of record held by the Legislature. Therefore, similar records of the Legislative Auditing Committee are exempt from public records requirements.

HB 65B creates a public meetings exemption for meetings of the Commission on Ethics at which confidential and exempt audit or investigative information regarding a lobbying firm is discussed.

Such records and meetings are closed to the public until the:

- Lobbying firm requests in writing that the records or meetings be made public; or
- Commission on Ethics determines there is probable cause that the audit reflects a substantial violation of the reporting laws.

The bill provides for repeal of the exemption on October 2, 2011, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a statement of public necessity and a contingent effective date.

C. SECTION DIRECTORY:

Section 1 amends s. 112.3215, F.S., creating a public records and public meetings exemption for audit and investigative information regarding a lobbying firm.

Section 2 provides a statement of public necessity.

Section 3 provides a contingent effective date.

¹ Section 11.0431(2)(a), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. The bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

The public records law in general creates an increase in government spending. Government employees must locate requested records, and must examine every requested record to determine if a public records exemption prohibits release of the record. There is likely no marginal fiscal impact to a single public records exemption; the location and examination process remains whether or not a particular public records exemption exists.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. The bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

None. The bill does not create, modify, amend, or eliminate a local expenditure.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None. This bill does not affect persons in the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not: require counties or municipalities to spend funds or to take an action requiring the expenditure of funds; reduce the percentage of a state tax shared with counties or municipalities; or reduce the authority that municipalities have to raise revenue.

2. Other:

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. Thus, the bill requires a two-thirds vote for passage.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Public Records and Public Meetings Laws

Article I, s. 24(a), Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record

of the legislative, executive, and judicial branches of government. Article I, s. 24(b), Florida Constitution sets forth the state's public policy regarding access to government meetings. The section requires all meetings of the executive branch and local government be open and noticed to the public.

The Legislature, however, may provide by general law for the exemption of records and meetings from the requirements of Article I, s. 24, Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.

Public policy regarding access to government records and meetings also is addressed in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record, and s. 286.011, F.S., requires that all state, county, or municipal meetings be open and noticed to the public. Furthermore, the Open Government Sunset Review Act² provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or, 3. Protecting trade or business secrets.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

² Section 119.15, F.S.

HB 65B

2005

1 A bill to be entitled

2 An act relating to public records and public meetings
3 exemptions for lobbying; amending s. 112.3215, F.S.;
4 creating a public records exemption for records relating
5 to an audit of a lobbying firm lobbying the executive
6 branch or the Constitution Revision Commission or an
7 investigation of violations of the lobbying compensation
8 reporting laws for the executive branch or the
9 Constitution Revision Commission; creating a public
10 meetings exemption for discussions of such records;
11 providing for release of the records under specified
12 conditions; providing for future legislative review and
13 repeal of the exemptions; providing a statement of public
14 necessity; providing a contingent effective date.

15
16 Be It Enacted by the Legislature of the State of Florida:

17
18 Section 1. Paragraph (d) is added to subsection (8) of
19 section 112.3215, Florida Statutes, as amended by House Bill
20 63B, 2005 Special Session B, or similar legislation adopted in
21 the same legislative session or an extension thereof, to read:

22 112.3215 Lobbying before the executive branch or the
23 Constitution Revision Commission; registration and reporting;
24 investigation by commission.--

25 (8)

26 (d) Records relating to an audit conducted pursuant to
27 this section or an investigation conducted pursuant to this
28 section or s. 112.32155 are confidential and exempt from s.

HB 65B

2005

119.07(1) and s. 24(a), Art. I of the State Constitution, and
any meetings held pursuant to such an investigation or at which
such an audit is discussed are exempt from s. 286.011(1) and s.
24(b), Art. I of the State Constitution either until the
lobbying firm requests in writing that such investigation and
associated records and meetings be made public or until the
commission determines there is probable cause that the audit
reflects a substantial violation of the reporting laws. This
paragraph is subject to the Open Government Sunset Review Act in
accordance with s. 119.15 and shall stand repealed on October 2,
2011, unless reviewed and saved from repeal through reenactment
by the Legislature.

Section 2. The Legislature finds that it is a public
necessity that records relating to an audit of a lobbying firm
lobbying the executive branch or the Constitution Revision
Commission or an investigation of violations of the lobbying
compensation reporting laws for the executive branch or the
Constitution Revision Commission be made confidential and exempt
from public records requirements and that meetings held pursuant
to such an investigation or at which such an audit is discussed
be made exempt from public meetings requirements until the
alleged violator requests in writing that such associated
records be made public or the Commission on Ethics determines
that the audit reflects a substantial violation of the reporting
laws. The disclosure of such records could substantially injure
a lobbying firm in the marketplace by providing its competitors
with detailed insights into the financial status of the firm,
thereby diminishing the advantage that the lobbying firm

HB 65B

2005

57 maintains over those who do not possess such records. Disclosure
58 would create an economic disadvantage for the lobbying firm. In
59 addition, the public release of such records through either a
60 public records request or a public meeting could cause
61 unwarranted damage to the good name and business reputation of a
62 lobbying firm if a substantial violation of the reporting laws
63 is found not to exist. Further, making such records available to
64 the public could encumber the commission's ongoing investigation
65 and its ability to gather pertinent information crucial to
66 determining whether a violation of the executive lobbying
67 compensation reporting laws exists. The harm to a lobbying firm
68 in the marketplace and to the effective administration of the
69 investigation and audit processes caused by the public
70 disclosure of such records far outweighs the public benefits
71 derived from its release.

72 Section 3. This act shall take effect on January 1, 2006,
73 if House Bill 63B or similar legislation is adopted in the same
74 legislative session or an extension thereof and becomes law.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. 65B

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

Council/Committee hearing bill: State Administration Council
Representative Reagan offered the following:

Amendment

Remove line(s) 36 - 62 and insert:
reflects a violation of the reporting laws. This paragraph is
subject to the Open Government Sunset Review Act in accordance
with s. 119.15 and shall stand repealed on October 2, 2011,
unless reviewed and saved from repeal through reenactment by the
Legislature.

Section 2. The Legislature finds that it is a public
necessity that records relating to an audit of a lobbying firm
lobbying the executive branch or the Constitution Revision
Commission or an investigation of violations of the lobbying
compensation reporting laws for the executive branch or the
Constitution Revision Commission be made confidential and exempt
from public records requirements and that meetings held pursuant
to such an investigation or at which such an audit is discussed
be made exempt from public meetings requirements until the
alleged violator requests in writing that such records and
meetings be made public or the Commission on Ethics determines

000000

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

22 there is probable cause that the audit reflects a violation of
23 the reporting laws. The disclosure of such records could injure
24 a lobbying firm in the marketplace by providing its competitors
25 with detailed insights into the financial status of the firm,
26 thereby diminishing the advantage that the lobbying firm
27 maintains over those who do not possess such records. Disclosure
28 would create an economic disadvantage for the lobbying firm. In
29 addition, the public release of such records through either a
30 public records request or a public meeting could cause
31 unwarranted damage to the good name and business reputation of a
32 lobbying firm if a violation of the reporting laws

000000